UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: February 16, 1999

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
EL PASO, TEXAS

Respondent

and

NATIONAL TREASURY EMPLOYEES
UNION, CHAPTER 143

Charging Party

AND Case Nos. DA-CA-60047
DA-CA-60048
(55 FLRA 43)

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
NEW ORLEANS, LOUISIANA

Respondent

and

NATIONAL TREASURY EMPLOYEES
UNION, CHAPTER 168

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring

the above case to the Authority. Enclosed are copies of my Decision on Remand, the service sheet, and the transmittal form sent to the parties. Also enclosed is the Record sent to this office on December 31, 1998.

Enclosures

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE EL PASO, TEXAS Respondent and NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 143 Charging Party AND DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE NEW ORLEANS, LOUISIANA Respondent and NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 168 Charging Party	Case Nos. DA-CA-60047 DA-CA-60048 (55 FLRA 43)

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been presented to the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision on Remand, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MARCH 22, 1999**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: February 16, 1999
Washington, DC

OALJ 99-16

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE EL PASO, TEXAS Respondent and NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 143 Charging Party AND DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE NEW ORLEANS, LOUISIANA Respondent and NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 168 Charging Party	Case Nos. DA-CA-60047 DA-CA-60048 (55 FLRA 43)

Currita Waddy, Esquire
Octave Weber, Esquire
For the Respondents

Walter E. Dresslar, Esquire
For the Charging Party

John M. Bates, Esquire
Charlotte A. Dye, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY

Administrative Law Judge

DECISION ON REMAND

Statement of the Case

My decision in this case issued on October 31, 1997, OALJ 98-02, and the facts are fully set forth therein. The Authority's decision herein issued December 31, 1998, 55 FLRA 43; 55 FLRA No. 16 (1998), and remanded the case to the undersigned, "for appropriate findings, consistent with this decision, concerning the Respondent's assertion that videotaping employee interviews constituted the exercise of management's reserved right under section 7106(a)(1) of the Statute to determine its internal security practices." (id. at 48 [slip op. at 11]). By Order dated January 5, 1999, the parties were invited to file supplemental briefs to the undersigned, on or before January 22, 1999. General Counsel and Respondent each timely mailed a Supplemental Brief, received on, or before January 26, 1999, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions.

FINDINGS

1. Mrs. Geraldine (Gerry) M. Seymour, nee Wilson, an Operational Analysis Specialist and Steward (Tr. 54-55), with respect to the Internal Affairs interview of Mr. Charles Christian on October 12, 1995, at which she was Mr. Christian's representative, testified, in part, as follows:

> "A When I questioned about the camera, he told me that this was the new procedure for Internal Affairs to interview employees.
>
> "Q It was a new procedure to videotape?
>
> "A To videotape, yes.
>
> "Q Is that why he didn't want the chairs to move?
>
> "A Exactly. (Tr. 58)

. . .

"Q Had you ever been at an Internal Affairs interview previously that was videotaped, to your knowledge?

"A Not videotaped. (Tr. 59)

. . .

"Q Once you had this discussion about their new policy of videotaping, how did the interview proceed at that point?

"A He proceeded to read to Charles Christian his administrative rights and administered the oath, asked him to sign, and proceeded the interview. Then the interview was interrupted. There was a knocking on the wall. And Mr. Fortunato stopped the interview.

"Q What do you mean, there was a knocking on the wall?

"A There was an adjacent room with the equipment for the audio and, I guess, the video. Not the audio. The videotaping. The equipment was in that adjacent room. And there was a third agent operating the equipment. (Tr. 60)

. . .

"Q Did Fortunato tell you how the video and audiotapes were going to be used?

"A Yes, he did. I asked about that. He said that the reason for videotaping, this new procedure of videotaping, was to detect whether the employee was lying or not by what was
captured by his body language on the videotape." (Tr. 61).

2. Mr. Guy Fortunato, a Senior Special Agent, Office of Internal Affairs, New Orleans (Tr. 110), who conducted the interview of Mr. Christian, above, testified, in part as follows:

"Q BY MS. WADDY: How many times have you videotaped Internal Affairs interviews of bargaining unit employees?

"A One time.

"Q Why did you choose to videotape that particular interview?

"A In the instance that we videotaped, it was regarding the investigation of the employee who had been arrested and failed to report the arrest to his managers or the Office of Internal Affairs as described by the policies and procedures manual. The employee had been the target of an Internal Affairs investigation just prior to, within several weeks to maybe a few months. The nature of the violations that he was arrested for involved assaults and physical batteries, as they were. One involved a domestic violence.

. . .

"THE WITNESS: The nature of the arrest, as I say, one involved a domestic violence situation where the employee was alleged to have physically assaulted his wife. The other, he was arrested for threats where he had -- the allegation was that he had threatened to kill someone who was trespassing on his property. Based on that, the fact that the crimes involved physical violence, the allegations of violence, we felt it would warrant the videotaping of the interview." (Tr. 113-114).

3. Mr. Doyle Wayne Walker, a Senior Special Agent, Office of Internal Affairs, McAllen, Texas (Tr. 120), testified, in part, as follows:

"Q Okay. Why did Internal Affairs choose to videotape these interviews?

"A There was a number of reasons. The primary reason is because it's the best evidence of an interview that you can have. It is the interview recorded on videotape. Other agencies have used it for

civilian suspects, if you could call them that. The U.S. Attorneys are all for it.

"It protects both sides. It protects us from being accused of coercion, of not giving the proper warnings. It protects the employee because there's no question of what the question was, what the response was. There's no 'he misunderstood' or 'that's not what he asked' or anything like that. It's there on the tape. It's great evidence." (Tr. 122).

. . .

"Q Okay. And in terms of videotaping as opposed to audiotaping, is somehow the videotaping, the sound is better or something that makes it more understandable, the spoken word?

"A No, ma'am. But there's more to a conversation or an interview than just the verbal content. There's body language that goes on. There's facial expressions, which you don't capture on audio recordings.

"Q Okay. By the use of videotaping, you wanted to be able to capture these facial gestures and body language?

"A It's all part of the interview. Yes, ma'am.

"Q And for what purpose would you want to capture this?

"A For purpose of evidentiary value.

"Q What kind of evidence do you suppose it gave you is what I asked you.

"A The -- if it's played back in a judicial proceeding, the jury or the magistrate can view the videotape and see the way the interview was conducted.

"Q What's the difference between audiotaping and videotaping in terms

of -- what's the visual image going to give you that you can't hear?

"A May I give you an example?

"Q Let me ask you a question. Is it true that the reason you wanted to videotape is so that you can determine by the demeanor of the person being interviewed, by their body language or how they looked or whatever, whether or not they were telling the truth?

"A That is part of it, yes, ma'am. The other part is it also protects us from being accused of using coercive gestures and mannerisms.

"Q Are you generally in these videos?

"A Yes, ma'am." (Tr. 128-129).

CONCLUSIONS

§ 6(a)(1) of the Statue provides, in pertinent part, as follows:

> "§ 7106. Management rights
>
> "(a) Subject to subsection (b) of this section[1], nothing in this chapter shall affect the authority of any management official of any agency—
>
> "(1) to determine the . . . internal security practices of the agency . . . ." (5 U.S.C. § 7106(a)(1)).

The Authority noted in its holding in American Federation of Government Employees, Federal Prison Council 33 and U.S. Department of Justice, Federal Bureau of Prisons, 51 FLRA 1112 (1996) (hereinafter, "Bureau of Prisons"), that,

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[1] Subsection (1) of section (b) of this section addresses negotiating at the election of the agency; and subsections (2) and (3) of section (b) concerns procedures (2) or appropriate arrangements (3) (I & I bargaining).

"It is well-established that management's right to determine its internal security practices under section 7106(a)(1) includes the authority to determine the policies and practices that are part of its plan to secure or safeguard its personnel, physical property or operations against internal and external risks. E.g., National Association of Government Employees, Locals R14-22 and R14-89 and U.S. Department of the Army, Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas, 45 FLRA 949, 960 (1992). The Authority has concluded that, where management shows a link, or reasonable connection, between its objective of safeguarding its personnel, property or operations and the investigative technique designed to implement that objective, a proposal that 'conflicts with' the selected investigative technique directly interferes with management's right under section 7106(a)(1). Id. at 961. The right includes the authority
to determine the investigative techniques management will employ to attain its internal security objectives. Id. at 960. In addition, techniques aimed at obtaining truthful and reliable information from interviewees constitute internal security practices under section 7106(a)(1). E.g., National Federation of Federal Employees, Local 1300 and General Services Administration, 18 FLRA 789, 798 (1985) (GSA) (proposal barring sworn statements in certain circumstances held to directly interfere with management's right to determine internal security practices)." (51 FLRA at 1115-1116).

(See, also American Federation of Government Employees, AFL-CIO, Local 1592 and Army-Air Force Exchange Service, Hill Air Force Base, Utah, 6 FLRC 613, 619-620 (1978); Department of Health and Human Services, Social Security Administration, Region VI, and Department of Health and Human Services, Social Security Administration, Galveston, Texas District, 10 FLRA 26, 39-40 (1982); American Federation of Government Employees, AFL-CIO, Local 1858 and Department of the Army, U.S. Army Missile Command, Redstone Arsenal, Alabama, 10 FLRA 440, 444-445 (1982); American Federation of Government Employees, Local 32 and Office of Personnel Management, 16 FLRA 40 (1984); National Federation

of Federal Employees, Local 1300 and General Services Administration, 18 FLRA 789, 795-798 (1985); United States Department of Defense, Department of the Army McAlester Army Ammunition Plant, 20 FLRA 606 (1985) (hereinafter, "McAlester") [This case involved the change of delivery of employee pay checks from hand delivery on the work premises to mail delivery only, to a home address or to a bank. In my decision, 20 FLRA at 609-641, I had rejected Respondent's assertion that bargaining was precluded by § 6(a) or § 6(b)(1) (negotiable only at the election of the agency) (Internal security -- § 6(a)(1) -- was discussed at length at 632-635 and I concluded that, ". . . Respondent's proposal to terminate the hand delivery of pay checks was not excepted from the obligation to bargain by § 6(a)(1) of the Statute." 20 FLRA at 635.) The Authority reversed, holding that the matter was a permissive subject of bargaining under § 6(b)(1), and, accordingly, Respondent's refusal to bargain did not violate 16(a)(5) or (1) of the Statute and dismissed the Complaint. 20 FLRA at 608. Because it found the matter subject to § 6 (b)(1), the Authority did not address any § 6(a)(1) assertion of Respondent. McAlester was appealed to the D.C. Circuit. In the meantime, an earlier decision of the Authority, 16 FLRA 619 (1984), which involved a substantially identical issue and which the Authority had followed in McAlester, was reversed by the Ninth Circuit Court of Appeals, 778 F.2d 1429 (9th Cir. 1985). The Authority requested the D.C. Circuit to remand McAlester for further consideration in light of the Ninth Circuit's decision, and, following the Court's remand, the Authority reversed its previous decision, 26 FLRA 177, 178 (1987) and held, ". . . in agreement with the Judge, that the Respondent's decision to mail paychecks . . . did not constitute a determination 'with respect to contracting out' within the meaning of section 7106(a)(2)(B) of the Statute. Therefore, we find in agreement with the Judge that the . . . refusal to bargain . . . over the proposed change . . . violated section 7116(a)(1) and (5) of the Statute." (26 FLRA at 180)]; Department of Veterans Affairs Medical Center, Denver, Colorado, 52 FLRA 16 (1996).

As the Authority noted, it long has held that use of polygraphs is a matter of internal security within the meaning of § 6(a)(1) of the Statute, 55 FLRA at 47; 55 FLRA No. 16, slip opinion p. 9; American Federation of Government Employees, AFL-CIO, Local 1858, supra [1982]; American Federation of Government Employees, Local 32, supra [1984]; National Federation of Federal Employees, Local 1300, supra; American Federation of Government Employees, AFL-CIO, Local 1808 and Department of the Army, Sierra Army Depot, 30 FLRA 1236, Provision 1, 1239-40 (1988) (Sierra Army Depot). A

polygraph as no purpose other than as an investigative tool; but, because of its inherent unreliability, courts rarely permit the introduction of test results. See, U.S. Department of Justice, U.S. Marshals Service and U.S. Marshals Service, District of New Jersey, 26 FLRA 890, 899 n.10 (1987). Video taping of an interview is not so intrusive a technique as the polygraph; has no inherent investigative characteristic; and its function and purpose is, simply, to make a visual picture of the interview, by means of an electronic camera, together with a sound recording of the interview. The device has become immensely popular as a camcorder for home use. As the video tape requires no developing, it may immediately be played on a VCR.

The record does not show that video-taping of witness interviews is part of any plan to secure or safeguard the personnel, physical property or operations of Respondent, Bureau of Prisons, supra; nor has Respondent shown a link, or reasonable connection between its objective of safeguarding its personnel, property or operations. For example, in American Federation of Government Employees, AFL-CIO, National Immigration & Naturalization Service Council and U.S. Department of Justice, Immigration & Naturalization Service, 8 FLRA 347 (1982) (hereinafter, "INS"), negotiability issues, the Union's proposal 8, in pertinent part, provided, ". . . [in] conflict-of-interest situations, no employee will be required to give a statement under oath except as may be required by law." (id. at 361) and its Proposal 9, in pertinent part, provided, "When a recording is made of an interview the employee or the representative will be allowed to also record the entire proceedings. . . ." (id. at 363). The Authority held each proposal to be non-negotiable. As to Proposal 8, the Authority stated, in part, as follows:

> ". . . the right to determine internal security practices also extends to the establishment of rules applicable to internal investigations relating to the integrity of an agency's opera-tions vis-a-vis actual or alleged conflicts of interest . . . the Agency's decision to require oaths . . . is an internal security practice under section 7106 (a)(1). . . ." (id. at 362);

and as to Proposal 9, the Authority sated, in part, as follows:

> ". . . the Union's proposal would grant Union Officials essentially an uncontrolled right . . . to maintain recordings and transcriptions of Agency investigative interviews . . . Such a proposal would deny the Agency's authority under section 7106(a)(1) of the Statute to prevent unauthorized disclosure of investigative material, i.e., determine its internal security practices . . . ." (id. at 364).

As to Proposal 8, the Agency's decision to require oaths in conflict of interest investigations, as the Authority found, was directly connected to the Agency's plan to safeguard its operations and Proposal 9 likewise directly related to the Agency's plan or policy to protect its personnel, physical property and operations by preventing the unauthorized disclosure of confidential material, investigative material and interference with ongoing investigations.

Here, Special Agent Fortunato told Steward Seymour, Mr. Christian's representative at his October 25, 1995, interview that, ". . . the reason for videotaping . . . was to detect whether the employee was lying or not by what was captured by his body language on the videotape." (Tr. 61). Mr. Fortunato said that during his seven and one-half years as a Senior Special Agency in New Orleans (Tr. 110), Mr. Christian's was the only interview he had videotaped (Tr. 113), and he said Mr. Christian's was videotaped because,

> ". . . it was regarding the investigation of the employee who had been arrested and failed to report the arrest to his managers or the Office of Internal Affairs as described by the policies and procedures manual. The employee had been the target of an Internal Affairs investigation just prior to, within several weeks to maybe a few months. The nature of the violations that he was arrested for involved assaults and physical batteries, as they were. One involved a domestic violence. (Tr. 113)
>
> . . .
>
> "THE WITNESS: The nature of the arrest . . .one involved a domestic violence

> situation where the employee was alleged to have physically assaulted his wife. The other . . . allegation was that he had threatened to kill someone who was trespassing on his property. Based on that, the fact that the crimes involved physical violence, the allegations of violence, we felt it would warrant the videotaping of the interview." (Tr. 114)

Mr. Christian may not have conducted himself in keeping with his name, but neither his conduct nor the objective of the investigation -- failure to report an arrest -- shows any connection to the safeguarding of its personnel, property or operations. Mr. Fortunato's assertion to the Union that the videotaping was to determine Mr. Christian's credibility, ". . . his body language on the videotape." (Tr. 61), was not pursuant to Agency policy or plan to videotape all interviews but was a random, one time in seven and one-half years, selection because of alleged off-premises violence on the part of the witness, and was not shown to have any reasonable relationship to any plan to secure or safeguard Respondent's personnel, physical property or operations. Indeed, the events, except the failure to report an arrest, occurred off Respondent's premises and concerned domestic violence.

Senior Special Agent Doyle said that the McAllen, Texas, Office of Internal Affairs videotaped 20 to 25 percent of its interviews (Tr. 121, 129) because,

> ". . . it's the best evidence of an interview that you can have. It is the interview recorded on videotape. . . .
>
> "It protects both sides. It protects us from being accused of coercion, of not giving the proper warnings. It protects the employee because there's no question of what the question was, what the response was. . . ." (Tr. 122)
>
> . . .
>
> "Q . . . is somehow the videotaping, the sound is better or something that makes it more understandable . . .

"A No, ma'am. But there's more to a conversation or an interview than just the verbal content. There's body language that goes on. There's facial expressions, which you don't capture on audio recordings. (Tr. 128)

. . .

"Q . . . Is it true that the reason you wanted to videotape is so that you can determine by the demeanor of the person being interviewed . . . whether or not they were telling the truth?

"A That is part of it, yes, ma'am. The other part is it also protects us from being accused of using coercive gestures and mannerisms." (Tr. 129).

That a video is the best evidence of an interview is not doubted and is well supported by the widespread use of video depositions of doctors in civil jury trials -- both plaintiff and defendant attorneys being in agreement that to the jurors, the video is like having the doctor present in the courtroom. But Mr. Doyle's insistence that videotape protects both sides was shown to be unsupported. Mr. Doyle conceded that there was nothing in a videotape that makes it more understandable and, accordingly, on audio the questions and answers and the warnings would be just as plain as on videotape. It is true that a "black skullcap" if carried by an inquisitor would not be "seen" on audio but his tone of voice and manner of questioning would be indelibly recorded. In short, Mr. Doyle's contention really come down to demeanor, as recorded on videotape, to determine credibility. Although McAllen videotaped nearly one-fourth of their interviews, many surreptitiously, it, nevertheless, was not part of the Agency's plan or policy to videotape <u>all</u> interviews.

As General Counsel states, <u>inter alia</u>, in his Supplemental Brief:

". . . Respondent introduced no evidence at the hearing which would establish a link or reasonable connection between its objective of safeguarding its personnel, property or operations and the practice of videotaping employee interviews. To begin with, Respondent's witnesses offered no evidence that Respondent utilizes any criteria

which is related to its internal security to determine whether or not the investigative interview of an employee should be videotaped. Homer Williams, who is employed with Respondent as its Assistant Commissioner for Internal Affairs, testified that the Office of Internal Affairs does not videotape all interviews of employees, but rather interviews are videotaped at the discretion of the investigator. Williams further testified that the practice of videotaping employees in investigative interviews may be followed in some offices, but not in others, depending upon the preference of the investigator. (TR 104).” (General Counsel's Supplemental Brief, pp. 5-6).

. . .

“. . . Fortunato did not assert that the allegations of physical violence directed against the employee which occurred outside of the workplace were related in any what to the maintenance of Respondent's internal security. Moreover, Fortunato also offered no testimony which would establish that he utilizes any criteria related to Respondent's internal security to determine which employee interviews are to be videotaped. Fortunato also did not testify that he videotapes all employee interviews which involve allegations of physical violence. . . .” (id., at 7).

. . .

“Respondent's witnesses offered various rationales for its decision to videotape some of the employee interviews which its Office of Internal Affairs conducts, but none of the rationales provided by these witnesses establish that Respondent's practice of videotaping some employee interviews is based upon internal security consideration.” (id., at 8).

. . .

“. . . there is no evidence in the record that the videotapes of employee interviews which are made by Respondent are viewed by Respondent's officials who were not present during the interview for the purpose of evaluating he demeanor of the employee.

> Finally, Walter's argument that videotaping of employee interviews protects the Internal Affairs Officer conducting the interview from being falsely accused of using coercive gestures or mannerisms during the interview may provide a legitimate rationale for Respondent to videotape employee interviews, but it is not a rationale that has any connection to the maintenance of Respondent's internal security." (id., at 10).
>
> . . .
>
> ". . . General Counsel respectfully submits that Respondent has not established by a clear preponderance of the evidence that a link or reasonable connection exists between its objective of safeguarding its personnel, property, or operations and the practice of videotaping some investigative interviews of its bargaining unit employees." (id., at 11).

Respondent cites and relies upon National Treasury Employees Union and U.S. Department of the Treasury U.S. Customs Service, Washington, D.C., Case No. 0-NG-2356, OALJ 98-31 (July 9, 1998), a decision by Judge Jesse Etelson, asserting that, ". . . the administrative law judge ruled that a proposal requiring the Agency to provide a copy of the tape-recording to the employee was not a negotiable procedure." (Respondent's Supplemental Brief, p. 4). That Judge Etelson found the union's Provision 9 non-negotiable because it provided, in part, that, ". . . the employee may receive a copy of the tape-recording and the transcript. . . ." is debatable, inasmuch as Provision 9 also provided, ". . . The employee may elect to tape record the interview . . . .", a like provision in INS, supra ("when a recording is made of an interview the employee or the representative will be allowed to also record the entire proceedings. . . ." (8 FLRA at 363)) which the Authority held rendered the union's proposal 9 non-negotiable and Judge Etelson specifically stated, ". . . I conclude, therefore, that the Authority's holding in INS controls the negotiability of Provision 9 and that it is nonnegotiable. . . ." (slip opinion, p. 23). INS, supra, is fully considered hereinabove.

For reasons set forth above, Respondent failed to show in this case any link or reasonable connection between any policy or plan to secure or safeguard its personnel,

physical property or operations against internal and external risks and the random videotaping of interviews of bargaining unit employees. Accordingly, Respondent's decision to videotape the employee interviews in this case was negotiable and Respondent was obligated to give the Union notice and opportunity to bargain before videotaping employee interviews. However, if, contrary to this conclusion, video recording of employee interviews were a reserved right of management, then, nevertheless, Respondent was obligated to bargain, the change having had more than a de minimis impact, pursuant to § 6(b)(2) and (3) of the Statute, as the Authority noted herein (55 FLRA at 48; slip opinion pp. 10-11). Respondent was obligated, therefore, to give the Union notice and an opportunity to bargain, whether about the decision to videotape or its impact and implementation, before changing conditions of employment at El Paso and at New Orleans. Because Respondent unilaterally changed conditions of employment at El Paso and at New Orleans by videotaping bargaining unit employee interviews, it violated §§ 16(a)(5) and (1) of the Statute and it is, again, recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.41, of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41, and § 18, of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the United States Department of the Treasury, United States Customs Service, shall:

1. Cease and desist from:

(a) Changing conditions of employment of bargaining unit employees at El Paso, Texas, or at New Orleans, Louisiana, by videotaping employee interviews without giving the National Treasury Employees Union, the exclusive repre-sentative of its employees (hereinafter, "NTEU"), notice and opportunity to bargain to the extent required by the Statute.

(b) In any like or related manner, interfering with, restraining, or coercing its employees at New Orleans, Louisiana, or El Paso, Texas, in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request of NTEU, provide any employee at El Paso, Texas, and any employee at New Orleans, Louisiana, whose interview has been videotaped, a copy of the videotape if the employee has not previously been furnished a copy of the videotape.

(b) Upon request of NTEU, discuss the use of any videotape made of any employee interview at El Paso, Texas, or at New Orleans, Louisiana.

(c) Before videotaping any employee interview at El Paso, Texas, or at New Orleans, Louisiana, give NTEU notice and, upon request, bargain to the extent required by the Statute.

(d) Post at its facilities in El Paso, Texas, and in New Orleans, Louisiana, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commissioner of Customs and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places at El Paso, Texas, and at New Orleans, Louisiana, where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to § 2423.41(e), of the Authority's Rules and Regulations, 5 C.F.R., § 2423.41(e), notify the Regional Director of the Dallas Region, Federal Labor Relations Authority, 525 Griffin Street, Suite 926, LB 107,

Dallas, Texas 75202-1906, in writing, within 30 days from

the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B.
DEVANEY
Administrative Law Judge

Dated: February 16, 1999

Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the United States Department of the Treasury, United States Customs Service, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES AT EL PASO, TEXAS AND AT NEW ORLEANS, LOUISIANA, THAT:

WE WILL NOT change conditions of employment of bargaining unit employees at El Paso, Texas, or at New Orleans, Louisiana, by videotaping employee interviews without giving the National Treasury Employees Union, the exclusive representative of our employees (hereinafter, "NTEU"), notice and opportunity to bargain to the extent required by the Statute.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees at El Paso, Texas, or New Orleans, Louisiana, in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL, upon request of NTEU, provide any employee at El Paso, Texas, and any employee at New Orleans, Louisiana, whose interview has been videotaped, a copy of the videotape if the employee has not previously been furnished a copy of the videotape.

WE WILL, upon request of NTEU, discuss the use of any videotape made of any employee interview at El Paso, Texas, or at New Orleans, Louisiana.

WE WILL, before videotaping any employee interview at El Paso, Texas, or at New Orleans, Louisiana, give NTEU notice and, upon request, bargain to the extent required by the Statute.

UNITED STATES DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Date:

By:

Commissioner of Customs
Washington, D.C.

This Notice must remain posted for 60 consecutive days from

the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Dallas Region, 525 Griffin Street, Suite 926, LB 107, Dallas, Texas 75202-1906, and whose telephone number is: (214) 767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION ON REMAND issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case Nos. DA-CA-60047, DA-CA-60048, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Currita Waddy, Esq.
Octave Weber, Esq.
423 Canal Street, Room 216
New Orleans, LA 70130
Certified Mail No. P 168 060 253

Walter E. Dresslar, Esq.
National Treasury Employees Union
3036 South 1st Street, Room 200
Austin, TX 78704
Certified Mail No. P 168 060 254

John M. Bates, Esq.
Charlotte A. Dye, Esq.
Federal Labor Relations Authority
525 Griffin St., Suite 926, LB 107
Dallas, TX 75202-1906
Certified Mail No. P 168 060 255

REGULAR MAIL:

National President
National Treasury Employees Union
901 E Street, NW, Suite 600
Washington, DC 20004-2037

Dated: February 16, 1999
Washington, DC